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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,095	04/13/2004	Eiichi Ueda	KON-1870	6153

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EXAMINER	
PERREIRA, MELISSA JEAN	
ART UNIT	PAPER NUMBER
1618	
MAIL DATE	DELIVERY MODE
09/17/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 10/824,095	**Applicant(s)** UEDA ET AL.	
	Examiner MELISSA PERREIRA	**Art Unit** 1618	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04 September 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.
   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: _____.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see below.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Michael G. Hartley/
Supervisory Patent Examiner, Art Unit 1618

Claims 21-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Otake et al. (US2004/0099976A1) or Castor (US 5,554,382) in view of Sachse et al. (Invest. Radiol.1997, 32, 44-50; pages provided are numbered 1-8) and further in view of Mackaness et al. (US 4,192,859) and Claims 21-42,44 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Otake et al. (US2004/0099976A1) or Castor (US 5,554,382) in view of Sachse et al. (Invest. Radiol.1997, 32, 44-50; pages provided are numbered 1-8) and further in view of Klaveness et al. (US 5,676,928) as stated in the office action mailed 7/29/08.

Applicant asserts that the declaration filed 3/17/08 provides a comparison of the sample A (of Mackaness et al.) and sample D provides for an increase in a factor of 34. Applicant asserts that sample A (of Mackaness et al.) is the closest prior art as a comparison of the encapsulated compounds must be examined because different compounds have different degrees of encapsulation.
The examiner still maintains that the sample C of Otake et al. is the closest prior art as the instant claims are drawn to the method of making the liposomes with supercritical carbon dioxide without the use of solvent which is encompasses by the reference of Otake et al. The closest prior art is that of Otake et al. and the weight percent of 15% of sample C (Otake et al. closest prior art) and a weight percent of 17% of sample D (inventive) where a weight percent of 2% is not a surprising and unexpected result as it could be anomalous. There are extraneous factors (i.e. human error) that can account for such as small weight percent difference. Multiple replications need to be performed to in order to show that it is not an anomalous result. Also, Otake et al. teaches that the liposomes are used to encapsulate a variety of water-soluble substances (contained in an aqueous phase) with high/increased trapping efficiency (abstract; p1, [0018]; fig 8). Therefore the use of the liposomes prepared by Otake et al. are expected to have high/increased trapping efficiencies.

Claim 27 is rejected under 35 U.S.C. 102(b) as being anticipated by Na et al. (US 5,326,552) as stated in the office action mailed 7/29/08.
Applicant asserts that Na et al. does not teach a liposomes.
The instant claim 27 is a product-by-process limitation and is not drawn to a liposome but to a contrast agent.

Claims 21,22 and 26 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim claims 1,4,6,8-10 and 19 of copending Application No. 11/180849 and claims 21,22,25 and 27 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1,5-8,10-12 and 14-17 of copending Application No. 11/187,397 as stated in the office action mailed 7/29/08.
Applicant requests that these rejections be held in abeyance until such time as an indication of patentable subject matter.
The rejections are maintained as there have been no terminal disclaimers filed.